

MEMORANDUM NO. _A

TO: All Agencies Under the Mayor

FROM: Kristin Bronson
City Attorney

DATE: December __, 2018

SUBJECT: PBI Office Transparency Measures

This Memorandum shall be attached and become part of Executive Order No. __ date December __, 2018, subject Office of Performance-Based Infrastructure ("PBI Office").

The City is committed to maximizing transparency in a manner consistent with achieving the best value for Denver's Citizens, best practices in the industry and Colorado Law. The purpose of this memo is to set forth specific transparency requirements for projects under consideration by the PBI Office including requirements for public notice, public engagement, public meetings and City Council Involvement.

Public Information and Outreach

To assist in evaluation of the effectiveness of PBI education and outreach efforts, the PBI Office shall maintain records of public and stakeholder engagement activities, including meeting dates, the names of meeting attendees if provided, records of meeting notifications including groups, entities and individuals notified, copies of handouts or presentations consistent with public relations best practices and established by the City of Denver's PBI program. All stakeholder feedback should be recorded, cataloged and preserved. Not only is this useful in identifying and prioritizing issues, but can be used to demonstrate that the appropriate amount of stakeholder outreach was conducted and feedback solicited.

The PBI Office will submit an Annual Report to City Council.

The PBI Office will post the following materials to the PBI Office website including:

1. Public Notices, as defined below;
2. Public Meetings;
3. Requests for Information;
4. Requests for Qualifications;
5. Requests for Proposals;
6. Executed Project Agreement subject to reasonable safeguards to protect confidential information pursuant to the Colorado Open Records Act.

Public Meetings

To provide the public with a meaningful opportunity for input on a proposed PBI project: the PBI office in coordination with the Sponsoring Agency and City Council shall hold a minimum of three public meetings on any Public Private Partnership under consideration.

At least one town hall meeting must be held during each of the following periods of the PBI project development process:

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1. During Screening Stage (Visioning, including Project Identification and Screening);
2. Following Structuring Stage (Project Development), after completion of a Business Case, information includes prior to issuance of the Request for Qualifications;
3. During Procurement Stage, following selection of short-listed proposers, prior to issuance of a Request for Proposals;

The meetings shall:

1. Provide the public and stakeholders with sufficient detail to understand the proposed PBI project as then proposed and the proposed long-term obligations of the financing arrangement under consideration;
2. Be held at appropriate locations close to the communities that will benefit from and be affected by the project and/or other appropriate locations that provide access to affected Denver residents;
3. Allow for meaningful comment, input, and questions from the public and responses from the PBI Office and Sponsoring Agency;
4. Provide information regarding the project objectives and needs the City seeks to address, the perceived advantages and disadvantages of the proposed PBI structure, potential alternative funding options (including options that rely exclusively on public funding), and the essential terms being considered.

Public Meetings will be posted on the PBI Office website at least one (1) week in advance and will include the location, date, and time of any public meeting along with sufficient information to provide interested parties with notice of the contemplated project that will be discussed. Interested parties will be provided with an opportunity to provide feedback regarding the proposed PBI project.

Public Input

At a minimum, stakeholder feedback should be integrated into the project planning process at each appropriate Program stage. Public input will be solicited and recorded and considered during project development.

Stakeholders may provide input through public meetings or on the PBI Office website.

Public Notice

The PBI Office will provide notice to the public and to City Council members of significant steps in the consideration of PBI projects. The PBI Office shall, at a minimum: Post notices on The PBI Office website, notify City Council members, provide notices by mail and email to Registered Neighborhood Organizations within a mile radius where the project will be located

The Office shall provide public notice and post on the PBI Office website of:

7. Public Meetings;
8. Requests for Information;
9. Requests for Qualifications;
10. Requests for Proposals;
11. Executed Project Agreement subject to reasonable safeguards to protect confidential information pursuant to the Colorado Open Records Act.

Council Involvement

The City Council members will be offered individual and Council committee briefings throughout the PBI project development process on non-confidential information. Council will be briefed on results of project screening, structuring, procurement and implementation. In addition to briefings, City Council members will be offered an active role in stakeholder engagement activities for projects within their respective districts. At-large members will be offered an active role in stakeholder outreach as well.

Before entering into a public-private partnership agreement, the Office shall submit to the Council and provide to the public through a public notice, a report summarizing key terms of the selected proposal, including:

- a. Participating private entities;
- b. Terms of the PBI agreement;
- c. Total cost;
- d. Cost to the City;
- e. Value-for-money analysis and public-sector comparator analysis;
- f. Proposed term;
- g. Delivery method;
- h. Participating public entities;
- i. The selection process including selection criteria and methodology for evaluating proposals.

Confidential Business Information

The City and the PBI Office are subject to and comply with the Colorado Open Records Act C.R.S. §§ 24-72-201, et. seq. ("CORA"). As such, public documents such as project RFQs and RFPS will be available to the public. To ensure a fair and competitive process an executive summary and other non-confidential information will be the only items released by the PBI Office before execution of a PBI agreement and the conclusion of any challenge to the award, absent an administrative or judicial order requiring release or disclosure.

After execution of a PBI agreement and the conclusion of challenge to the award, the PBI Office will, upon appropriate request pursuant to CORA, disclose non-confidential portions of proposals or other information submitted by Proposers.

Proposers shall identify any portions of their proposal or other submissions that it considers to be confidential business information, contain trade secret or otherwise confidential commercial, financial, or proprietary information not subject to disclosure pursuant to CORA"). If the City receives a request for information clearly identified as confidential it will attempt to notify the Proposer of the request and provide an opportunity for the Proposer to confirm what information is confidential. The City will make the final determination regarding what information shall be released pursuant to CORA. In the event that a lawsuit is filed to compel disclosure of information, the Proposer is responsible to take appropriate action to defend its claim that the information at issue is protected under CORA.

Auditor's Access to Records

The Auditor shall have access to records maintained by the PBI Office as necessary to conduct financial or performance audits in accordance with generally accepted governmental auditing standards promulgated by the United States Comptroller General and City confidentiality requirements.